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Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE DYNAMIC RANDOM ACCESS  
MEMORY (DRAM) ANTITRUST  
LITIGATION

This Document Relates To:

All Direct Purchaser Actions

Master File No. M-02-1486 PJH

MDL No. 1486

**DECLARATION OF GUIDO SAVERI IN  
SUPPORT OF FINAL APPROVAL OF CLASS  
ACTION SETTLEMENTS WITH SAMSUNG,  
INFINEON, AND HYNIX**

Time: 10:00 a.m.

Date: November 1, 2006

Judge: Hon. Phyllis J. Hamilton

Courtroom: 3

1 I, Guido Saveri, declare:

2 1. I am a partner with Saveri & Saveri, Inc., one of the co-lead counsel for Plaintiffs in this  
3 litigation. I am a member of the Bar of the State of California and an attorney admitted to practice in the  
4 Northern District of California.

5 2. I make this declaration in support of final approval of settlements with defendants  
6 Infineon, Samsung and Hynix. Except as otherwise stated, I have personal knowledge of the facts stated  
7 below.

8 3. On July 11, 2003, the parties entered into a Stipulation and Protective Order concerning  
9 the disclosure of confidential and highly confidential information. Shortly thereafter, and pursuant to  
10 the Order Limiting the Scope of Discovery, defendants began producing copies of documents they had  
11 turned over to the Grand Jury in response to subpoenas. The defendants' document production to the  
12 Direct Purchaser Plaintiffs was on a rolling basis. To date, defendants have collectively produced over  
13 four million pages of documents from both domestic and foreign entities. Many of the documents are in  
14 Korean, Japanese, Chinese, and German and have been translated prior to being indexed, analyzed, and  
15 databased.

16 4. Plaintiffs' counsel dedicated numerous lawyers and paralegals, and considerable other  
17 resources (including third-party vendors and technical staff) to the thorough translation, analysis,  
18 electronic coding, and databasing of the documents produced by defendants. During the first phase of  
19 the document review, document review teams consisting of five to twelve attorneys from various law  
20 firms gathered in a document depository to review the documents produced by defendants. In total,  
21 plaintiffs counsel reviewed and analyzed thousands of boxes of defendants' productions to the Grand  
22 Jury.

23 5. During the second phase of the document review, over 20 paralegals at three locations  
24 around the nation inputted and coded the relevant subjective and objective data from the attorney review  
25 into a single, consolidated database. This consolidated database then provided plaintiffs the ability to  
26 run sophisticated queries regarding the documents and significant issues in the case. Plaintiffs also  
27 organized certain "key" documents by subject matter category, and documents relating to more than 100  
28 potential deponents were compiled in preparation for depositions. These mammoth efforts proved to be

1 vital to plaintiffs' preparation of motions, meet and confer efforts, damage analysis, class certification,  
2 and to timely respond to the complex legal and factual issues that arose during litigation. This kind of  
3 preparation and organization has allowed the Direct Purchaser Plaintiffs to avoid non-essential  
4 appearances before the Court.

5 6. Plaintiffs' counsel frequently met and conferred with opposing counsel regarding  
6 perceived incompleteness in their document productions, and particularly about defendants' consistent  
7 and uniform refusal to produce documents they claimed were unrelated to the U.S. DRAM market.

8 7. In addition to the review of documents produced to the Grand Jury, plaintiffs propounded  
9 separate Requests for Production of Documents and Interrogatories on all defendants. Pursuant to Judge  
10 Spero's February 28, 2006 Discovery Plan Order, all parties were required to complete their productions  
11 and to supplement their interrogatories by March 15, 2006. In response, plaintiffs have received and  
12 reviewed thousands of pages of additional documents..

13 8. Through the diligent analysis of the documents and other evidence produced, plaintiffs  
14 identified more than 100 current and former employees of the defendants with knowledge of the relevant  
15 issues in this case. As a result, plaintiffs have noticed the depositions of approximately 75 witnesses. In  
16 July 2005, Plaintiffs also served notices of deposition pursuant to Rule 30(b)(6) on the domestic and  
17 foreign defendants. To date, plaintiffs have taken more than 90 depositions, as well as depositions  
18 pursuant to Rule 30(b)(6) for three groups of defendants.

19 9. On December 7, 2005, plaintiffs filed a motion for Class Certification. On March 10,  
20 2006, non-setting defendants filed their joint opposition. The Court Certified the class on June 5, 2006.

21 10. On August 27, and 28, 2006 respectively, plaintiffs served on defendants the report of  
22 their experts Professor Roger G. Noll and Dr. Paul C. Liu. The deposition of Professor Noll was taken  
23 by defendants on September 25, 2006 and the deposition of Dr. Liu was taken by defendants on  
24 September 28, 2006. On October 2, 2006 defendants filed six expert reports. The deposition of  
25 defendants' experts where taken thereafter.

26 11. On May 11, 2006 the Court granted preliminary approval of the settlements with Infineon  
27 and Samsung. On May 17, 2006, the Court granted preliminary approval of the settlement with Hynix.  
28 On July 27, 2006 the Court issued an Order Approving Joint Notice to Class Regarding Class

1 Certification and Preliminary Approval of Class Action Settlements with the Samsung, Infineon and  
2 Hynix defendants. Pursuant to that order, Plaintiffs disseminated notice of the proposed settlements and  
3 the fairness hearing to the Class.

4 12. The declaration of Charlene Young of the Rust Consulting, Inc., the Claim  
5 Administrator, describes the dissemination of the notice to the class and attaches as an exhibit the list of  
6 opt-outs from the class.

7 13. Throughout 2005 and 2006, plaintiffs' counsel have worked extensively with consultants  
8 and experts in preparation for trial and all motions.

9 14. I participated in all of the settlement negotiations with the Infineon defendants.  
10 Settlement negotiations began August, 2004. My firm and Cotchett, Pitre, Simon & McCarthy  
11 participated in the initial meetings on behalf of plaintiffs. At that time, plaintiffs had reviewed  
12 substantial numbers of the millions of pages of documents produced by defendants and thoroughly  
13 analyzed the relevant facts and legal theories in this litigation. Plaintiffs were well aware of the  
14 strengths and weaknesses of their case. These initial meetings were followed by others. Lawyers from  
15 the Hagens Berman Shapiro Sobol LLP and Wolf, Haldenstein, Adler, Freeman & Herz firms also  
16 participated in these meetings. The negotiations with Infineon were thorough and hard-fought. They  
17 were conducted at arms-length in the utmost good faith. We had several face to face meetings with  
18 Infineon's counsel and representatives, including a meeting attended by Infineon management personnel  
19 who had traveled from Germany for the meeting. During these meetings, the parties exchanged  
20 considerable information, and made detailed presentations about their views of the case. In addition,  
21 these negotiations were supplemented by telephone and email communications. At the end of this long  
22 process the parties reached a settlement; the final agreement was executed on September 2, 2005.

23 15. It is my opinion that the Infineon Settlement is, in every respect, fair, adequate and  
24 reasonable and in the best interests of the class members. My opinion in this regard is based upon the  
25 knowledge gained from the extensive investigation and discovery conducted in this case to date, as  
26 described above, and my consultation with co-lead counsel and other lawyers representing plaintiffs  
27 herein, who are of the same opinion. My opinion is also based on my extensive experience in class  
28 action antitrust cases. I have practiced in this field for over 45 years and have been involved in

1 hundreds of settlements. In my experience, a settlement which represents, as this one does, 10.53% of a  
2 defendant's sales which remain in the case – i.e., which have not already been settled – is a very good  
3 one.

4 16. I also participated in all of the settlement negotiations with the Samsung defendants.  
5 Settlement negotiations began June, 2005. Again, plaintiffs had reviewed millions of pages of  
6 documents produced by defendants and thoroughly analyzed the relevant facts and legal theories in this  
7 litigation before the Samsung negotiations, and were, therefore, well prepared. Lawyers from my firm,  
8 Hagens Berman Shapiro Sobol LLP, Wolf, Haldenstein, Adler, Freeman & Herz, and Cotchett, Pitre,  
9 Simon & McCarthy participated in the Samsung negotiations. As with Infineon, the negotiations were  
10 thorough and hard-fought. They too were conducted at arms-length in the utmost good faith. We had  
11 several face to face meetings with Samsung's counsel, including a meeting attended by Samsung  
12 management personnel who had traveled from Korea. The parties exchanged considerable information,  
13 and made detailed presentations about their views of the case. In addition, these negotiations were  
14 supplemented by telephone and email communications. At the end of this long process the parties  
15 reached a settlement; the final agreement was executed on February 24, 2006.

16 17. It is my opinion that the Samsung Settlement is, in every respect, fair, adequate and  
17 reasonable and in the best interests of the class members. My opinion in this regard is based upon the  
18 knowledge gained from the extensive investigation and discovery conducted in this case to date, as  
19 described above, and my consultation with co-lead counsel and the other lawyers representing plaintiffs  
20 herein, who are of the same opinion. The Samsung Settlement represents 12.33% of Samsung's  
21 remaining sales in the case. Again, based on my experience, that is an excellent recovery for the class.

22 18. I participated in all of the settlement negotiations with the Hynix defendants. Settlement  
23 negotiations began in February, 2006. At that time, plaintiffs had reviewed millions of pages of  
24 documents produced by defendants, and thoroughly analyzed the relevant facts and legal theories in this  
25 litigation. Plaintiffs were well aware of the strengths and weaknesses of their case. The negotiations  
26 with Hynix were thorough and hard-fought. They were conducted at arms-length in the utmost good  
27 faith. We had a number of face to face meetings with Hynix's counsel and representatives, including a  
28 meeting attended by Hynix management personnel who had traveled from Korea. During these

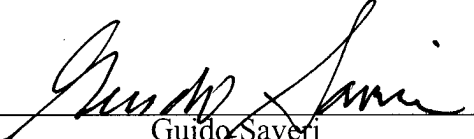
1 meetings, the parties exchanged considerable information, and made detailed presentations about their  
 2 views of the case. In addition, these negotiations were supplemented by telephone and email  
 3 communications. At the end of this process the parties reached a settlement; the final agreement was  
 4 executed on April 28, 2006. Lawyers from my firm, the Hagens Berman Shapiro Sobol LLP firm, the  
 5 Wolf, Haldenstein, Adler, Freeman & Herz firm, and the Cotchett, Pitre, Simon & McCarthy firm  
 6 participated in the settlement meetings on behalf of plaintiffs.

7 19. It is my opinion that the Hynix Settlement is, in every respect, fair, adequate and  
 8 reasonable and in the best interests of the class members. My opinion in this regard is based upon the  
 9 knowledge gained from the extensive investigation and discovery conducted in this case to date, as  
 10 described above and my consultation with co-lead counsel and the other lawyers representing plaintiffs  
 11 herein, who are of the same opinion. My opinion is also based on my extensive experience in class  
 12 action antitrust cases. In my experience, a settlement which represents, as this one does, 13.96% of a  
 13 defendant's sales which remain in the case – i.e., which have not already been settled – is an excellent  
 14 one.

15 20. Attached as Exhibit A is a true and correct copy of a Transcript of Proceedings on June  
 16 21, 2005 in *In re Rubber Chemicals Antitrust Litigation*.

17 21. Attached as Exhibit B is a copy of an order dated September 12, 2006 entered for Judge  
 18 Martin J. Jenkins in the Ruber Chemicals Antitrust Litigation.

19  
 20 I swear under penalty of perjury under the laws of the United States of America that the  
 21 foregoing is true and correct. Executed this 17 day of October, 2006, in San Francisco, California.

22  
 23   
 24 Guido Saveri

25  
 26 ram.627.wpd

# **EXHIBIT A**

PAGES 1 - 20

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE MARTIN J. JENKINS

IN RE: RUBBER CHEMICALS  
ANTITRUST LITIGATION,

)  
) C 04-1648 MJJ  
)

) SAN FRANCISCO, CALIFORNIA  
) TUESDAY, JUNE 21, 2005

**COPY**

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

**FOR PLAINTIFFS**

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BY: PAUL F. BENNETT, ESQUIRE  
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455 MARKET STREET, SUITE 1810  
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BY: SUSAN G. KUPFER, ESQUIRE

(FURTHER APPEARANCES ON FOLLOWING PAGE)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR  
OFFICIAL COURT REPORTER, U.S. DISTRICT COURT

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APPEARANCES (CONTINUED) :

FOR DEFENDANT  
FLEXSYS

GIBSON, DUNN & CRUTCHER  
1050 CONNECTICUT AVENUE, NW  
WASHINGTON, D.C. 20036  
BY: D. JARRETT ARP, ESQUIRE

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PROCEEDINGS; TUESDAY, JUNE 21, 2005

1  
2  
3 THE CLERK: THE FIRST MATTER WILL BE CIVIL MATTER  
4 NO. 04-01648, IN RE: RUBBER CHEMICALS ANTITRUST LITIGATION.

5 PARTIES MAY STEP FORWARD AND STATE YOUR APPEARANCES.

6 MR. BENNETT: GOOD MORNING, YOUR HONOR.

7 PAUL BENNET AND MY PARTNER, STEVE SIDENER, FROM  
8 GOLD, BENNETT, CERA & SIDENER, ON BEHALF OF THE CLASS.

9 MR. SAVERI: GOOD MORNING, YOUR HONOR.

10 GUIDO SAVERI, SAVERI & SAVERI, ON BEHALF OF  
11 PLAINTIFF CLASS.

12 THE COURT: YOUR VOICE TAILED OFF AT THE VERY END.  
13 I DON'T THINK THE REPORTER GOT IT. I KNOW I DIDN'T.

14 MR. SAVERI: GUIDO SAVERI..

15 THIS IS THE FIRST TIME, YOUR HONOR, I HAVE BEEN  
16 ACCUSED OF NOT RAISING MY VOICE, BUT IT'S SAVERI & SAVERI,  
17 GUIDO SAVERI, FOR THE PLAINTIFFS.

18 THE COURT: THANK YOU.

19 MS. KUPFER: GOOD MORNING, YOUR HONOR.

20 SUSAN KUPFER, GLANCY, BINKOW & GOLDBERG IN SAN  
21 FRANCISCO FOR THE PLAINTIFFS.

22 MR. ARP: GOOD MORNING, YOUR HONOR.

23 JARRETT ARP FROM THE GIBSON, DUNN FIRM ON BEHALF OF  
24 THE FLEXSYS DEFENDANTS.

25 THE COURT: OKAY. THIS MATTER IS ON FOR APPROVAL OF

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1 THE SETTLEMENT AS TO THE CLASS PLAINTIFFS WITH RESPECT TO THE  
2 FLEXSYS DEFENDANTS.

3 HAS EVERYONE HERE STATED AN APPEARANCE?

4 MR. BENNETT: I BELIEVE SO, YOUR HONOR.

5 THE COURT: IS THERE ANYONE PRESENT IN THE COURTROOM  
6 IN THE AUDIENCE THAT WISHES TO BE HEARD WITH RESPECT TO THE  
7 APPROVAL IN THIS MATTER?

8 ALL RIGHT. SO THERE IS NO AUDIBLE RESPONSE AND NO  
9 OTHER INDICATION OF ANYONE ELSE WHO WISHES TO SPEAK TO THESE  
10 ISSUES. LET ME ASK JUST A FEW QUESTIONS.

11 ONE, DO YOU HAVE ANY -- I DON'T KNOW IF YOU  
12 SUBMITTED A FINAL FORM OF JUDGMENT IN THE MATTER. HAVE YOU?

13 MR. BENNETT: I HAVE, BUT, YOUR HONOR, IN THE LAST  
14 DAY THERE HAS BEEN CERTAIN CHANGES THAT WE HAVE AGREED TO WITH  
15 THE FLEXSYS DEFENDANTS.

16 THE COURT: DO YOU WANT TO GIVE THEM TO ME?

17 MR. BENNETT: YES. I WILL HAND UP AN ORIGINAL AND  
18 ONE COPY.

19 THE COURT: DO YOU WANT TO GO OVER IT?

20 MR. BENNETT: YES, YOUR HONOR.

21 THE TEXT OF THE JUDGMENT, WHICH IS FIVE PAGES IN  
22 LENGTH, WITH THE EXCEPTION OF PARAGRAPH 12, WHICH IS NEW, IS  
23 NEWLY ADDED AT THE REQUEST OF THE FLEXSYS -- ONE OF THE  
24 COMPANIES THAT OPTED OUT, WHICH IS PARKER HANNIFAN, AND THEY  
25 HAVE PROVIDED A LETTER THIS MORNING SAYING THAT THEY ARE GOING

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1 TO CONDITIONALLY WITHDRAW THEIR OPT OUT, ASSUMING THAT  
2 PARAGRAPH 12 IS IN THE FINAL JUDGMENT.

3 ON BEHALF OF THE CLASS, WE HAVE NO OBJECTION TO THAT  
4 PARAGRAPH REMAINING IN. ESSENTIALLY, WHAT THAT SAYS IS WHAT  
5 WAS INTENDED BY THE SETTLEMENT AGREEMENT, NAMELY, THAT IF YOU  
6 OPT OUT OF THIS SETTLEMENT, THAT DOES NOT AFFECT YOUR RIGHTS  
7 GOING DOWN THE ROAD AGAINST THE OTHER DEFENDANTS, WHETHER TO  
8 STAY IN TO A CLASS OR TO LITIGATE.

9 THE COURT: SO THERE'S JUST NO OPT OUT ON A  
10 GOING-FORWARD BASIS; THEY'RE STILL LEFT TO THEIR OPTIONS WITH  
11 RESPECT TO --

12 MR. BENNETT: ANY OTHER SETTLEMENTS THAT COME ON OR  
13 GOING FORWARD TO TRIAL.

14 THE COURT: OKAY. ANY OTHER CHANGE?

15 MR. BENNETT: YES, THERE'S ONE OTHER CHANGE.

16 YESTERDAY WE GOT AN UNCONDITIONAL WITHDRAWAL OF AN  
17 OPT OUT. IT'S ON PAGE SEVEN OF EXHIBIT B. THERE WAS A COMPANY  
18 CALLED DUPONT -- DOW DUPONT ELASTOMERS THAT HAD OPTED OUT.  
19 THEY SENT IN A LETTER WITHDRAWING THAT OPT OUT YESTERDAY. SO  
20 IT WAS ORIGINALLY NUMBER FOUR, AND IF YOU LOOK AT EXHIBIT B ON  
21 PAGE SEVEN, THEIR NAME NO LONGER APPEARS. SO THE OPT OUT --

22 THE COURT: DUPONT DOW ELASTOMERS?

23 MR. BENNETT: RIGHT. IT NO LONGER APPEARS  
24 BECAUSE --

25 THE COURT: OKAY.

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1 SO, BASICALLY, PARAGRAPH 12, WHICH IS A CONDITIONAL  
2 OPT OUT ON THIS PARTICULAR SETTLEMENT, BUT DOES NOT EVINCE ANY  
3 INTENT OR MAKE ANY BINDING STATEMENT WITH RESPECT TO FUTURE  
4 SETTLEMENTS THAT THE COURT MAY HAVE PRESENTED TO IT, AND FOR  
5 ALL INTENTS AND PURPOSES WILL REMAIN AS A MEMBER OF THE CLASS  
6 GOING FORWARD WITH RESPECT TO WHAT REMAINS AFTER WE SEE WHERE  
7 THE DUST SETTLES TODAY.

8 MR. BENNETT: CORRECT.

9 THE COURT: THEN THE OTHER IS THAT THERE'S AN  
10 UNCONDITIONAL OPT OUT WITH RESPECT TO DUPONT.

11 MR. BENNETT: NOT DUPONT.

12 THE COURT: DOW ELASTOMER.

13 MR. BENNETT: YES. IT'S DDE, AS OPPOSED TO EI  
14 DUPONT DE NEMOURS. THEY ARE STILL AN OPT OUT.

15 THE COURT: RIGHT.

16 MR. BENNETT: AND, THEREFORE, PROPERLY LISTED.

17 THE COURT: OKAY.

18 IF THE COURT IS SATISFIED WITH PARAGRAPH 12 ON THE  
19 LIST OF OPT OUTS, THE PARKER HANNIFAN CORPORATION, BOTH THE  
20 FLEXSYS DEFENDANTS AND THE CLASS WOULD SUGGEST THAT THE OPT OUT  
21 THAT IS LISTED AS NUMBER SEVEN, STARTING ON PAGE TEN OF  
22 EXHIBIT B AND CARRYING OVER TO PAGE 11, WOULD BE STRICKEN.

23 THE COURT: WHICH WOULD REFERENCE PARAGRAPH 12?

24 MR. BENNETT: THAT IS CORRECT.

25 THE COURT: ANY OBJECTION TO THAT?

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1 MR. ARP: NONE, YOUR HONOR. WE CONCUR.

2 MR. BENNETT: YOUR HONOR, PERHAPS IT WOULD HELP IF I  
3 HANDED UP A LETTER FROM COUNSEL FOR PARKER HANNIFAN.

4 THE COURT: WE'LL MAKE IT PART OF THE RECORD.

5 MR. BENNETT: PART OF THE RECORD -- THAT I RECEIVED  
6 THIS MORNING.

7 THE COURT: OKAY. ANYTHING --

8 MR. BENNETT: NO, THERE ARE NO OTHER CHANGES.

9 THE COURT: SO LET ME ASK YOU THEN JUST A COUPLE OF  
10 QUESTIONS -- STRIKE THAT.

11 BEFORE I FORGET, LET'S GO TO EXHIBIT B.

12 WHAT, IF ANYTHING, DO YOU MAKE OF THE NUMBER OF  
13 ENTITIES THAT ARE OPTING OUT OF THIS SETTLEMENT AS REFERENCED  
14 IN PARAGRAPH B, NOW MODIFIED BY THE STRIKING OF THE PARKER  
15 HANNIFAN CORPORATION -- WHAT, IF ANYTHING, DO YOU MAKE OF THE  
16 NUMBER OF OPT OUTS WITH RESPECT TO THE ADEQUACY AND  
17 REASONABLENESS OF THE SETTLEMENT IN THIS MATTER?

18 MR. BENNETT: WELL, YOUR HONOR, IT IS -- AS WE SET  
19 FORTH IN OUR PAPERS, THREE MAJOR COMPANIES INDIVIDUALLY SETTLED  
20 BEFORE THE CLASS SETTLED. AND IF YOU LOOK AT THE LIST OF THE  
21 OPT OUTS, THE TWO CONTINENTAL ENTITIES, IT'S MY UNDERSTANDING,  
22 CONTINENTAL NORTH AMERICA OPT OUTS, AS WELL AS CONTINENTAL  
23 NON-NORTH AMERICA OPT OUT, HAD SETTLED PRIOR TO THE CLASS  
24 SETTLEMENT.

25 THE COURT: OKAY. THAT IS THE BULK OF THE OPT OUTS,

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1 IT LOOKS TO ME.

2 MR. BENNETT: IT'S A BULK OF THE COMPANIES. COOPER  
3 TIRE, WHICH IS NUMBER THREE AND LIKEWISE --

4 THE COURT: ARE THESE SUBSIDIARIES OF --

5 MR. BENNETT: THE FIRST FIVE PAGES ARE ALL  
6 CONTINENTAL OR CONTINENTAL AFFILIATES.

7 THE COURT: OKAY.

8 MR. BENNETT: THEN AT THE BOTTOM OF PAGE SIX, YOU  
9 START WITH COOPER.

10 THE COURT: RIGHT.

11 MR. BENNETT: AND THAT COMPANY ITSELF HAD ALSO  
12 SETTLED WITH FLEXSYS PRIOR TO THE TIME OF THE SETTLEMENT.

13 THE COURT: OKAY. IT IS MY UNDERSTANDING THAT EI  
14 DUPONT HAS NOT SETTLED AND IS AN OPT OUT, BUT I DON'T KNOW FOR  
15 SURE.

16 GOOD YEAR TIRE, THE NEXT LISTED OPT OUT, HAD SETTLED  
17 WITH FLEXSYS PRIOR TO THE CLASS SETTLEMENT.

18 THE COURT: LOOKS LIKE MICHELIN, TOO.

19 MR. BENNETT: AND THE SAME THING IS TRUE FOR  
20 MICHELIN.

21 THE COURT: OKAY.

22 MR. BENNETT: AND PARKER HANNIFAN IS THE ONE WE JUST  
23 TALKED ABOUT.

24 THE COURT: IT WASN'T CLEAR, WHICH IS WHY I ASKED.

25 MR. BENNETT: RIGHT.

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1 THE COURT: LET ME ALSO ASK, IN THE SETTLEMENT  
2 AGREEMENT ITSELF, THERE IS -- CAN YOU TURN TO THAT DOCUMENT?

3 MR. BENNETT: I CAN.

4 THE COURT: SPECIFICALLY, PARAGRAPH 20, SUBSECTION  
5 (F), WHICH DISCUSSES A PROVISION IN THE DISTRIBUTION OF THE  
6 SETTLEMENT FUND, JUST TO ORIENT YOU, AND IT REFLECTS THAT THE  
7 FLEXSYS DEFENDANTS AND THE CLASS PLAINTIFFS, THAT UNDER THE  
8 PROPOSED PLAN OF ALLOCATION OF A NET SETTLEMENT, IF ADJUSTMENTS  
9 ARE MADE OR INCURRED, IT'S NOT PART OF THE AGREEMENT AND IT'S  
10 TO BE CONSIDERED BY THE COURT SEPARATELY FROM THE ISSUES OF  
11 FAIRNESS, REASONABLENESS AND THE ADEQUACY OF THE SETTLEMENT.

12 I JUST WANT TO HAVE A SENSE OF WHAT WE ARE REALLY  
13 TALKING ABOUT HERE. ARE WE TALKING ABOUT CLAIMS THAT GET  
14 SUBMITTED AND THE EBB AND FLOW OF ADJUSTMENTS THAT ARE MADE TO  
15 THAT?

16 MR. BENNETT: WHAT WE ARE TALKING WITH IS PRECISELY  
17 THAT. IF YOU STEP BACK, FLEXSYS IS PAYING 18.5 MILLION DOLLARS  
18 TO SETTLE THE CLAIMS OF WHAT REMAINS IN THE CLASS, AND YOU ARE  
19 BEING ASKED TO DETERMINE THAT THAT IS FAIR, REASONABLE AND  
20 ADEQUATE.

21 AFTER THAT PROCESS -- OR, ACTUALLY, THE PROCESS HAS  
22 STARTED, WHERE CLAIM FORMS ARE SOLICITED FROM CLAIM MEMBERS,  
23 AND THERE SOMETIMES IS DISPUTE, SOMETIMES THERE'S NOT DISPUTE,  
24 BUT THERE'S BACK AND FORTH BETWEEN THE CLAIMS ADMINISTRATOR AND  
25 A SPECIFIC CLAIMANT OVER WHAT THE SPECIFIC CLAIMANT IS ENTITLED

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1 TO. IF THE CLAIMS ADMINISTRATOR AND THE CLAIMANT CANNOT WORK  
2 THAT OUT CONSENTUALLY, THE ISSUE BEFORE THE MONIES ARE  
3 DISTRIBUTED WOULD BE BROUGHT TO YOU FOR DETERMINATION IN THE  
4 FORM OF A MOTION WHERE WE WOULD SEEK AUTHORIZATION TO  
5 DISTRIBUTE THE MONEY, BUT WE WOULD POINT OUT THAT THERE IS A  
6 DISPUTE BETWEEN THIS CLAIMANT, AND THE CLAIMANT WOULD BE GIVEN  
7 NOTICE AND BE ABLE TO BE PRESENT AND PRESENT WHATEVER EVIDENCE  
8 OR INFORMATION THAT IT HAS TO SUPPORT ITS CLAIM.

9 THE COURT: BECAUSE WHAT I WANTED TO MAKE SURE IS  
10 THAT THIS -- THIS IS NOT AN ISSUE WITH RESPECT TO THE  
11 GENERALIZED FOCUS OF THE PLAN OF ALLOCATION. THIS IS MORE OF A  
12 PROVE UP ISSUE DOWNSTREAM AND SOME, AS I SAID, EBB AND FLOW OR  
13 DISCUSSION WITH RESPECT TO WHAT MAY TRANSPIRE THERE. THAT  
14 DOESN'T NECESSARILY EVINCE SOME CONCERN ABOUT -- FOR ME WHETHER  
15 THE INDIVIDUAL CLASS MEMBERS WHO ARE SEEKING TO PROVE UP ARE  
16 AFFORDED DUE PROCESS OR IN ANY WAY CHANGES THE PRO RATA  
17 DISTRIBUTION. THIS IS JUST AN ISSUE OF WHETHER THEY HAVE  
18 ACTUALLY ESTABLISHED THEIR CLAIM AND SOME DISPUTE, AND,  
19 ULTIMATELY THE COURT WOULD BE THE ARBITER OF THAT?

20 MR. BENNETT: THAT IS CORRECT. AND FLEXSYS WOULD  
21 NOT BE INVOLVED IN THAT PROCESS BECAUSE THE MONEY WOULD BELONG  
22 TO THE CLASS.

23 THE COURT: USUALLY NOT.

24 MR. BENNETT: AND IT'S A QUESTION OF HOW MUCH SHOULD  
25 GO TO WHICH CLASS MEMBERS.

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1 THE COURT: OKAY.

2 THEN IS THERE ANY CHANGE IN THE COSTS THAT ARE  
3 PRAYED FOR?

4 MR. BENNETT: NO, YOUR HONOR.

5 THE COURT: I WANT TO MAKE SURE THAT THE -- OR THE  
6 25 PERCENT BENCHMARK JUST ABOUT THE ATTORNEYS' FEES REALLY  
7 STILL FOCUSES ON THE COMMON FUND AMOUNT OF THE SETTLEMENT HERE.

8 MR. BENNETT: THAT IS CORRECT.

9 THE COURT: NO CHANGES WITH RESPECT TO THAT?

10 MR. BENNETT: THAT IS CORRECT, YOUR HONOR.

11 THE COURT: OKAY.

12 MR. BENNETT: AND THE AMOUNT OF COSTS THAT ARE  
13 REQUESTED IS SOMETHING NORTH OF \$692,000 IS ALSO THE -- REMAINS  
14 THE SAME. THERE'S NO CHANGES.

15 THE COURT: AND TO DATE, NO OBJECTIONS EITHER WITH  
16 RESPECT TO THE ATTORNEYS' FEES OR THE REASONABLENESS AND  
17 ADEQUACY OF THE SETTLEMENT PROCEEDS?

18 MR. BENNETT: THAT IS CORRECT. AND THERE'S ALSO NO  
19 OBJECTION TO THE GENERAL PLAN OF ALLOCATION.

20 THE COURT: ANYBODY HAVE ANYTHING ELSE?

21 MR. ARP: NOTHING HERE, YOUR HONOR.

22 MR. BENNETT: YOUR HONOR, I HAVE PROPOSED FINAL  
23 ORDERS ON BOTH THE APPROVAL OF THE PLAN OF ALLOCATION AND AN  
24 ORIGINAL AND ONE OF EACH, IF THAT'S ENOUGH, AND THE SAME WITH  
25 RESPECT TO THE FEE AND COST.

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1 THE COURT: OKAY. SUBMITTED?

2 MR. BENNETT: SUBMITTED.

3 THE COURT: ALL RIGHT. THE COURT NOTES THE  
4 FOLLOWING:

5 I HAVE READ BOTH THE PARTIES' BRIEFING AND  
6 SUPPORTING DECLARATIONS WITH RESPECT TO THE PRELIMINARY  
7 APPROVAL AND ALSO THE CLASS SETTLEMENT PLAN OF ALLOCATION AND  
8 STATEMENT THEREIN OF REQUEST FOR INTERIM ATTORNEYS' FEES. AND  
9 I HAVE READ AND CONSIDERED THE MEMORANDA SUBMITTED BY THE CLASS  
10 PLAINTIFFS SEEKING APPROVAL OF THE SETTLEMENT HERE TODAY, FINAL  
11 APPROVAL, AND APPROVAL OF THE PLAN OF ALLOCATION AND THE  
12 INTERIM REQUEST FOR ATTORNEYS' FEES AND COSTS AND ASSOCIATED  
13 EXHIBITS THERETO.

14 I HAVE INQUIRED WITH RESPECT TO THE CONCERNS THE  
15 COURT HAD WITH RESPECT TO THE SETTLED AGREEMENT, PLAN OF  
16 ALLOCATION, THE CONCERNS ARISING FROM THE SCOPE OF THE REQUEST  
17 TO OPT OUT OF THE SETTLEMENT, PROPOSED SETTLEMENT, AND I NOW  
18 MAKE THE FOLLOWING FINDINGS:

19 CLEARLY, APPROVAL OF THE SETTLEMENT AND THE PLAN OF  
20 ALLOCATION REQUIRES THE COURT ENCOMPASS THE PROVISIONS OF RULE  
21 23(E) THE COURT NOTES AND FINDS IT AUTHORIZED PRELIMINARY  
22 APPROVAL OF THE PROPOSED SETTLEMENT ON MARCH 7 FOR THE FLEXSYS  
23 DEFENDANTS ONLY, AND IN THAT PRELIMINARY APPROVAL, THE  
24 CERTIFIED CLASS RELATED TO ALL PERSONS WHICH PURCHASED RUBBER  
25 CHEMICALS AND/OR MISCELLANEOUS INCLUDED CHEMICALS EXEMPTED THAT

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1 IS IN THE UNITED STATES DIRECTIVE FROM ANY OF THE DEFENDANTS,  
2 AND IT EXEMPTED THE DEFENDANTS IN THIS MATTER AND OTHER  
3 INDIVIDUALS. IT ALSO INCLUDED ANY OF THEIR RESPECTIVE PRESENT  
4 OR FORMER PARENTS, SUBSIDIARIES OR AFFILIATES AT ANY TIME  
5 DURING THE PERIOD OF TIME MAY 1ST, '95 TO DECEMBER 31ST, 2001.

6 THE COURT FINDS NOTICE WAS GIVEN TO POTENTIAL CLASS  
7 MEMBERS AS REQUIRED BY THE COURT IN PRELIMINARY APPROVAL OF THE  
8 PROPOSED SETTLEMENT WITH THE FLEXSYS DEFENDANTS IN ACCORD WITH  
9 LOCAL DUE PROCESS AND UNDER THE PROVISIONS OF RULE 23(E).

10 THE COURT NOTES THE PROPOSED SETTLEMENT IN SUMMARY  
11 FORM AS REFLECTED IN THE FINAL JUDGMENT INVOLVES AN ALL CASH  
12 PAYMENT OF \$18,500,000 WHICH NOW SITS IN ESCROW.

13 THE JUDGMENT AND SETTLEMENT AGREEMENT INCLUDES A  
14 MOST FAVORED NATION CLAUSE AND A COOPERATION CLAUSE INVOLVING  
15 THE FLEXSYS DEFENDANTS AND THE CLASS PLAINTIFFS GOING FORWARD,  
16 AND THE ATTENDANT BENEFITS OF THE COOPERATION IN TERMS OF COST  
17 REDUCTION AND ACCESS TO IMPORTANT INFORMATION ARE SET FORTH  
18 CLEARLY IN THE SETTLEMENT AGREEMENT.

19 THIS COURT IS COGNIZANT OF ITS DUTY REGARDING THE  
20 APPROVAL OF CLASS SETTLEMENT AND NOTES IN DECIDING WHETHER TO  
21 APPROVE THE SETTLEMENT, THIS COURT'S INTRUSION UPON WHAT  
22 OTHERWISE IS A PRIVATE CONSENTUAL AGREEMENT NEGOTIATED BETWEEN  
23 THE PARTIES TO A LAWSUIT IS LIMITED TO THE EXTENT NECESSARY TO  
24 REACH A REASONABLE JUDGMENT AND THAT THE AGREEMENT IS NOT A  
25 PRODUCT OF FRAUD, OVERREACHING OR COLLUSION BETWEEN THE

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1 NEGOTIATING PARTIES AND THE SETTLEMENT IS AS IMPORTANT, FAIR,  
2 REASONABLE AND ADEQUATE TO ALL CONCERNED.

3 THE COURT MUST LOOK TO THE SETTLEMENT IN ITS  
4 ENTIRETY, AS OPPOSED TO ISOLATED PROVISIONS THEREOF, IN  
5 DETERMINING THE FAIRNESS AND ADEQUACY THEREOF, AND I HAVE DONE  
6 SO WITH RESPECT TO THIS MATTER.

7 THE BURDEN IS ON THE PROPONENT TO MEET THIS  
8 STANDARD, AND THE COURT HAS CONSIDERED THE FOLLOWING FACTORS IN  
9 REACHING ITS FINDINGS HERE THIS MORNING:

10 THE EXTENT OF THE DISCOVERY COMPLETED AND THE  
11 STRENGTHS OF THE CASE. THE LAWSUIT WAS BROUGHT BY DIRECT  
12 PURCHASERS OF RUBBER CHEMICALS AND ALSO ASSOCIATED CHEMICALS  
13 USED IN THE PRODUCTION IN THE VULCANIZATION OF RUBBER, AND THAT  
14 THE ALLEGATIONS INCLUDED ASSERTIONS THAT THE DEFENDANTS  
15 CONSPIRED TO FIX OR MAINTAIN PRICES OF AND ALLOCATE MARKETS FOR  
16 RUBBER CHEMICALS SOLD IN THE UNITED STATES ALL IN VIOLATION OF  
17 SHERMAN ACT, SECTION ONE, AND, AS A RESULT, THE MEMBERS OF THE  
18 SETTLEMENT OF THE CLASS PAID MORE FOR RUBBER CHEMICALS THAN  
19 OTHERWISE THEY WOULD HAVE SUSTAINED IN THE INJURY.

20 THE MOVING PARTY CHARACTERIZES THE CASE AS STRONG,  
21 AND THE COURT, IN REVIEW OF THE DOCUMENTS BEFORE IT, THERE'S NO  
22 REASON, FACTUAL REASON, TO DISPUTE THAT. HOWEVER, THE COURT  
23 NOTES THAT THE PLAINTIFF STILL BEARS THE RISK OF ESTABLISHING  
24 BOTH LIABILITY AND ANTITRUST INJURY AND DAMAGES. AND I NOTE  
25 THAT IN ESTABLISHING AND MEETING THAT INTENDED BURDEN OF PROOF,

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1 THERE HAS BEEN NO PLEA OR ACKNOWLEDGEMENT OF LIABILITY.

2 THE COURT ALSO NOTES THAT THE TASKS ASSOCIATED THAT  
3 BRING THE PARTIES HERE TODAY FOR APPROVAL OF SETTLEMENT INVOLVE  
4 THE FOLLOWING:

5 THE CASE IS IN THE DISCOVERY PHASE; HOWEVER,  
6 NUMEROUS DOCUMENTS HAVE BEEN EXAMINED THAT RELATE TO IMPORTANT  
7 AND SIGNIFICANT ISSUES, SUCH AS SALES AND PRICING DATA,  
8 DEPOSITIONS HAVE BEEN TAKEN INCLUDING -- CONCERNING ELECTRONIC  
9 DATA, REVENUE EARNED AND RUBBER CHEMICALS PRODUCED BY THE  
10 DEFENDANTS, ALL OF WHICH PROVIDE A FACTUAL BACKDROP TO ASSESS  
11 THE STRENGTH OF THE CASE, AND TO MAKE AN ASSESSMENT AS TO  
12 WHETHER OR NOT THE SETTLEMENT IS FAIR, REASONABLE AND  
13 APPROPRIATE.

14 WHILE THE COURT NOTED THAT COUNSEL CHARACTERIZES THE  
15 CASE AS STRONG, THE COURT NOTES THAT THE SETTLEMENT ELIMINATES  
16 THE ATTENDANT RISK ASSOCIATED WITH THE UNCERTAINTY OF FORMAL  
17 LITIGATION AND AMENDING THE ATTENDANT BURDEN OF PROOF.

18 THE COURT ALSO NOTES THAT THE SETTLEMENT PROMOTES AN  
19 ALL CASH PAYMENT TODAY, AND IT BODES WELL FOR THE CLASS  
20 REGARDING ISSUES OF FINALITY AND THE INVOLVEMENT IN RISK  
21 ASSOCIATED WITH THE LITIGATION OF THIS MATTER.

22 THE COURT NOTES THERE WILL BE SUBSTANTIAL TIMEFRAME  
23 TO THE RESOLUTION OF THIS MATTER THAT IS STAYED OFF BY THE  
24 SETTLEMENT IN THIS MATTER. THE COURT HAS ALREADY CHARACTERIZED  
25 THE SETTLEMENT BUT NOTES THERE ARE CONCRETE BENEFITS TO THE

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1 CLASS MEMBERS THAT INCLUDE THE IMMEDIATE CASH PAYOUT, ACCOUNTS  
2 FOR INEQUITY FROM PRIOR SETTLEMENTS, AS I DISCUSSED WITH  
3 COUNSEL ON THE RECORD HERE TODAY, THROUGH THE MOST FAVORED  
4 NATION CLAUSE, AND THE RECOVERY HERE IS AN EXCELLENT RECOVERY,  
5 IN THE COURT'S VIEW, WEIGHING THE ATTENDANT RISK OF FORMAL  
6 LITIGATION AND THE AMOUNT OF THE SETTLEMENT WHEN COMPARED TO  
7 OTHER SIMILAR ANTITRUST CASES, AND NOTES THAT THE \$18 MILLION  
8 ALL CASH SETTLEMENT IS FOUR PERCENT OF THE FLEXSYS DEFENDANTS  
9 SALES, AND THAT IS GREATER THAN OR EQUAL TO IN RELATIVE TERMS  
10 TO THE COURTS'S VIEW THAT FIGURES ASSOCIATED AND SIMILAR  
11 ANTITRUST CASES.

12 THE COURT NOTES THAT COUNSEL BEFORE THE COURT ARE  
13 EXPERIENCED COUNSEL, AND NOT ONLY EXPERIENCED IN TERMS OF  
14 LONGEVITY OF PRACTICE, BUT PARTICULARLY EXPERTISE IN ANTITRUST  
15 MATTERS OF THIS NATURE.

16 FINALLY, THE COURT NOTES THAT NOTICE WAS REASONABLY  
17 AND SEASONABLY GIVEN WITH RESPECT TO THE PROPOSED SETTLEMENT,  
18 THE AMOUNT OF THE SETTLEMENT, THE COOPERATION ASPECTS OF THE  
19 SETTLEMENT, AND TO DATE THERE HAVE BEEN NO OBJECTIONS IN THE  
20 MATTER.

21 THE COURT FINDS ON THIS RECORD THAT THERE IS NO  
22 FACTUAL BASIS TO FIND ANY COLLUSION, FRAUD OR OVERREACHING ON  
23 THIS RECORD. AND, MOREOVER, HAVING EXAMINED THE PLAN OF  
24 ALLOCATION, THE COURT ALSO NOTES IT IS REASONABLE, FAIR AND  
25 ADEQUATE IN THAT THE PROCEEDS ARE DISTRIBUTED ON A PRO RATA

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1 BASIS, TIED TO THE DOLLAR AMOUNT OF EACH FLEXSYS CLASS MEMBER'S  
2 QUALIFYING PURCHASES OF RUBBER AND/OR MISCELLANEOUS INCLUDED  
3 CHEMICALS, AND THE CLASS MEMBERS HAVE BEEN SO INFORMED  
4 REASONABLY AND SEASONABLY, AND THERE HAVE BEEN NO OBJECTIONS.

5 THE COURT ALSO MUST FIND THE SETTLEMENT PASSES  
6 MUSTER UNDER RULE 23, SUBSECTION (A) AND SUBSECTION (B), AND  
7 THE COURT NOTES THAT IT DOES. THERE COULD BE NO ARGUMENT THAT  
8 IT MEETS THE NUMEROSITY REQUIREMENT. IT IS CLEAR THAT THERE  
9 ARE ISSUES OF LAW, IN FACT, COMMON TO THE CLASS MEMBERS  
10 INVOLVING THE LEGAL PRICE FIXING SCHEME THAT IMPACTS ALL  
11 PURCHASES IN THE AFFECTED MARKET.

12 THE CLAIMS ARE TYPICAL, AS IS THE CLASS PLAINTIFFS  
13 ALL ALLEGE THE SAME ANTITRUST VIOLATIONS ALLEGEDLY COMMITTED BY  
14 THE FLEXSYS DEFENDANTS.

15 THE INTEREST OF THE CLASS MEMBERS ARE ADEQUATELY  
16 REPRESENTED BY COUNSEL WHO ARE EXPERIENCED, AS I INDICATED, IN  
17 THIS TYPE OF LITIGATION, AND THERE ARE NO ACTUAL OR APPARENT  
18 CONFLICTS ON THIS RECORD THAT WOULD DEFEAT CERTIFICATION UNDER  
19 THE CONFLICTS CONCERNED AND THE ADEQUACY OF REPRESENTATION  
20 CONCERNED IN RULE 23(A).

21 ALL PLAINTIFFS WILL RECEIVE COMPENSATION BASED ON  
22 THE PERCENTAGE OF THEIR INJURY WITH RESPECT TO THE TOTAL  
23 INJURY, AND THERE IS NO FAVORED STATUS IN THE SETTLEMENT WITH  
24 RESPECT TO ANY PARTICULAR MEMBER OF THE CLASS.

25 THE COURT ALSO NOTES THAT UNDER SECTION B(3) THERE

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1 ARE COMMON QUESTIONS OF LAW AND FACT, AND THEY PREDOMINATE OVER  
2 THE INDIVIDUAL QUESTIONS AND CLEARLY PROCEEDING AS A CLASS  
3 ACTION SUPERIOR TO ALL THE MEANS OF ADJUDICATION.

4 SO THE COURT, BASED ON THIS RECORD, FINDS THAT THE  
5 SETTLEMENT AND THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND  
6 ADEQUATE IN THIS MATTER AND ALSO FINDS -- NOW MOVES TO THE  
7 ISSUE OF ATTORNEYS' FEES.

8 THE COURT NOTES THAT THE MATTER BROUGHT BEFORE THE  
9 COURT TODAY, THE ALLEGATIONS OF THIS LAWSUIT ARE COMPLICATED,  
10 THAT THE RESULT ACHIEVED IS EXCEPTIONAL, AS OUTLINED BY THIS  
11 COURT ALREADY. THE COURT ALSO NOTES THAT A REASONABLE FEE  
12 UNDER THE COMMON FUND DOCTRINE IS THE NORMAL METHOD FOR  
13 ASSESSMENT OF ATTORNEYS' FEES IN THIS MATTER, AND THE COURT  
14 FINDS THAT THE FEE HERE IS REASONABLE AND FAIRLY COMPENSATES  
15 COUNSEL FOR THE REASONABLE VALUE OF THEIR SERVICES IN THIS  
16 MATTER.

17 THE RESULT ACHIEVED IS EXCELLENT AT FOUR PERCENT OF  
18 THE ACTUAL SALES. IT COMPARES FAVORABLY, AS I'VE INDICATED, TO  
19 ANTITRUST CASES OF A SIMILAR NATURE. IT NOTES THAT THE  
20 COOPERATION PROVISION BENEFITS THOSE CLASS MEMBERS THAT ARE  
21 SETTLING, AND CERTAINLY EVEN FUTURE CLASS MEMBERS WITH RESPECT  
22 TO THE ONGOING LITIGATION.

23 THE COURT NOTES THAT THE RISK OF LITIGATION HAS BEEN  
24 ELIMINATED FOR THESE SETTLING CLASS MEMBERS, BUT THAT THESE  
25 RISKS HAVE BEEN BORNE BY COUNSEL BECAUSE OF THE CONTINGENCY FEE

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1 REFERENCE THE LETTER FROM MR. EDMOND SEARBY, WHO IS COUNSEL FOR  
2 PARKER HANNIFAN'S CORPORATION. I INCORPORATE THAT LETTER BY  
3 REFERENCE WITH RESPECT TO PROVISIONS OF PARAGRAPH 12 AND THE  
4 CONDITIONAL OPT OUT.

5 MR. BENNETT: SO YOU ARE STRIKING THE PARAGRAPH  
6 NUMBER SEVEN, THE OPT OUT OF PARKER HANNIFAN?

7 THANK YOU, YOUR HONOR.

8 THE COURT: THESE ARE THE FINAL JUDGMENTS AND THE  
9 LETTER WE INCORPORATED. THAT SHOULD BE KEPT TOGETHER IN THE  
10 COURT'S COPIES. AND HERE ARE SEVERAL COPIES OF THE ORDER WITH  
11 RESPECT TO INTERIM FEES AND THE PLAN OF ALLOCATION.

12 SO YOU I'LL SEE DOWN THE ROAD.

13 MR. ARP: CORRECT, YOUR HONOR.

14 MR. BENNETT: THANK YOU, YOUR HONOR.

15 MR. SIDENER: THANK YOU, YOUR HONOR.

16 (PROCEEDINGS ADJOURNED.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

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CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C04-1648 MJJ, IN RE: RUBBER CHEMICAL ANTITRUST LITIGATION, WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

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JOAN MARIE COLUMBINI, CSR 5435, RPR

FRIDAY, JUNE 24TH, 2005

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**EXHIBIT B**

FILED

SEP 12 2006

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAUNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAIN RE RUBBER CHEMICALS ANTITRUST  
LITIGATION

MDL Docket No. C-04-1648 MJJ

Class Action**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF PLAN OF  
ALLOCATION OF SETTLEMENT  
PROCEEDS**

THIS DOCUMENT RELATES TO:

ALL ACTIONS.

Date: September 12, 2006

Time: 9:30 a.m.

Place: Courtroom of Hon. Martin J. Jenkins  
Courtroom 11, 19<sup>th</sup> Floor

Plaintiffs' Motion for Final Approval of Proposed Settlement with the Bayer Defendants and Approval of the Plan of Allocation ("Motion") came on for hearing on September 12, 2006. The Court has considered the Motion, the supporting papers, the argument of counsel, and all other arguments presented at the hearing. Due and adequate notice having been given to the Class, and good cause appearing, the Court hereby finds that:

1. This Court has jurisdiction over the subject matter of the Motion and all matters relating thereto, including all members of the Class.
2. Due and adequate notice of the proposed Plan of Allocation was provided to the Class. The Notice of Settlement In Class Action And Hearing On Settlement Approval, Plan of Allocation, and Request for Attorneys' Fees ("Class Notice"), which sets forth the proposed Plan

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF PLAN OF ALLOCATION OF SETTLEMENT  
PROCEEDS - MDL Docket No. C-04-1648 MJJ**

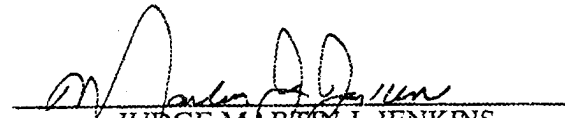
1 of Allocation, was mailed to all members of the Class who could be reasonably identified and  
 2 was posted on the Claims Administrator's website. In addition, a summary notice explaining  
 3 how to obtain the Class Notice was published in the national edition of *The Wall Street Journal*,  
 4 *Rubber & Plastics News*, and *Chemical Marketing Reporter*. Notice of the Plan of Allocation  
 5 has been given in accordance with the Court's Order Granting Preliminary Approval of Proposed  
 6 Settlement With The Bayer Defendants, entered June 26, 2006. The Class Notice adequately  
 7 advised the Class of the Plan of Allocation and their right to object to it. Full and fair  
 8 opportunity was provided to the members of the Class to be heard regarding the proposed Plan of  
 9 Allocation and the notice requirements of Rule 23(e) of the Federal Rules of Civil Procedure and  
 10 due process have been satisfied.

11 3. The objection filed by Rubber Specialties, Inc. is overruled. The Court finds that  
 12 Rubber Specialties lacks standing to object because it is not a member of the Class. *See Gould v.*  
 13 *Alleco, Inc.*, 883 F.2d 281, 284 (4<sup>th</sup> Cir. 1989). Rather, the Court finds that Rubber Specialties is  
 14 an indirect purchaser of Rubber Chemicals. Under controlling Supreme Court precedent (*see e.g.*  
 15 *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 728-279 (1977)), Rubber Specialties therefore could  
 16 not have been properly a member of the Class based on the federal claims asserted herein.  
 17 Rubber Specialties' rights and obligations are, in no way, impaired or affected, by this direct  
 18 purchaser Action or the settlement thereof with Bayer.

19 4. The Plan of Allocation set forth in the Class Notice is, in all respects, fair,  
 20 adequate and reasonable to the Settlement Class. Accordingly, the Court hereby grants final  
 21 approval of the Plan of Allocation.

22 **IT IS SO ORDERED.**

23 Dated: September 12, 2006

  
 JUDGE MARTIN J. JENKINS  
 UNITED STATES DISTRICT JUDGE